IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Bail Appl..No. 7316 of 2007()

(CRIME NO.47/07 ON THE FILE OF EXCISE RANGE INSPECTOR, KUTHIATHODU)

PETITIONER

M.R.MUKUNDAN, S/O.RAGHAVAN, AGED 61,
MALIKATHARAYIL, KUTHIATHODU VILLAGE,
PADINJATTUMKARA VADAKU MURI, CHERTALA TALUK,
ALAPPUZHA DISTRICT, THIRUMALABHAGAM POST OFFICE.

BY ADV. DR.V.N.SANKARJEE
SRI.V.N.MADHUSUDANAN
SRI.BABU. E.A.U.

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY THE HOME SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, REPRESENTED BY THE PUBLIC PROSECUTOR, THE HIGH COURT OF KERALA, ERNAKULAM.

2. EXCISE RANGE INSPECTOR, EXCISE RANGE OFFICE, KUTHIATHODU.
BOTH RESPONDENTS ARE REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 7316 OF 2007 F

Dated this the 29th day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under section 57(a) of the Kerala Abkari Act. The petitioner is one of the three joint licensees of toddy shop No.33. The co-licensees (3 in all) have all been arrayed as accused in the crime now. The crux of the allegations is that when sample of toddy was drawn from the said shop, it was found to contain more than the permissible and possible maximum percentage of 8.1% of ethyl alcohol. The prosecution alleges that ethyl alcohol in excess of the maximum possible self generated alcohol of 8.1% in the toddy must have been added externally and is consequently a foreign ingredient added to the toddy in order to enhance its intoxicating quality. The percentage of ethyl alcohol on examination was found to be 8.24%.

2. The learned counsel for the petitioner relying on the decision reported in ***State of Kerala Vs. Unni*** [2007 (1) KLT 151 (SC)] contends that the fixation of 8.1% is arbitrary and unreasonable. No ready and instant inference can be drawn from the mere fact that the percentage of ethyl alcohol has exceeded the prescribed 8.1%. In these circumstances, the petitioner may be granted anticipatory bail, it is

submitted.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the mere fact that the petitioner is only a joint licensee will not in any way help him to claim exoneration from the liability of a licensee in respect of the shop. He is admittedly a joint licensee.

4. The learned Public Prosecutor further submits that the decision in ***Unni's*** case referred to above cannot now be pressed into service in view of the subsequent amendment of the Excise Manual as also the relevant Rules under the Kerala Abkari Shops and Disposal Rules. Scientific studies have now revealed that the maximum percentage of self generated ethyl alcohol in genuine toddy cannot even exceed 8.1% on account of natural reasons. The stipulation in the amended Rule and the consequent notification have already been held to be valid, legal and correct by this Court in the judgment dated 31.10.2007 in W.P.(C) No.24408/07 and Crl.M.C.No.2052/07. In these circumstances, the inference appears to be inescapable that any percentage of ethyl alcohol in excess of the maximum (possible and permitted) extent of 8.1% must be held to be externally added and a foreign ingredient. In this view of the matter, I am of the opinion that the petitioner cannot succeed in his claim for anticipatory bail.

5. I agree with the Public Prosecutor that there are no features

in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This, I am satisfied is a fit case where the petitioner must surrender before the learned Magistrate and then seek regular bail in the normal and ordinary course.

6. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

7. I may hasten to observe that I have considered the question only for the purpose of grant of anticipatory bail and no observation in this order will fetter the right of the petitioner to raise all necessary, possible and relevant contentions at later stages of the proceedings.

(R.BASANT, JUDGE)

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